

(d) We will determine that a State is subject to the specific penalties for failure to perform if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient to show compliance or if we determine that the State has not adequately documented actions verifying that it has met the participation rates or the time limits.

(e) To determine if a State has met its MOE requirements, we will also use the supplemental information in the annual report required in accordance with § 265.9(c) of this chapter.

(f) States must maintain records in accordance with § 92.42 of this title.

[64 FR 17890, Apr. 12, 1999, as amended at 71 FR 37481, June 29, 2006]

**§ 262.4 What happens if we determine that a State is subject to a penalty?**

(a) If we determine that a State is subject to a penalty, we will notify the State agency in writing, specifying which penalty we will impose and the reasons for the penalty. This notice will:

(1) Specify the penalty provision at issue, including the penalty amount;

(2) Specify the source of information and the reasons for our decision;

(3) Invite the State to present its arguments if it believes that the information or method that we used were in error or were insufficient or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute; and

(4) Explain how and when the State may submit a reasonable cause justification under § 262.5 and/or corrective compliance plan under § 262.6.

(b) Within 60 days of when it receives our notification, the State may submit a written response that:

(1) Demonstrates that our determination is incorrect because our information or the method that we used in determining the violation or the amount of the penalty was in error or was insufficient, or that the State acted, in the absence of Federal rules, on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 262.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and corrective compliance plans are not available for failing to repay a Federal loan; meet the basic MOE requirement; meet the Contingency Fund MOE requirement; expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 262.1; or maintain 80 percent, or 75 percent, as appropriate, basic MOE during a year in which the State receives a Welfare-to-Work grant.

(e)(1) If we request additional information from a State that we need to determine reasonable cause, the State must ordinarily provide such information within 30 days.

(2) Under unusual circumstances, we may give the State an extension of the time to respond to our request.

(f)(1)(i) We will notify the State in writing of our findings with respect to reasonable cause generally within 60 days of the date when we receive its response to our penalty notice (in accordance with paragraph (b) of this section).

(ii) If the finding is negative and the State has not yet submitted a corrective compliance plan, it may do so in response to this notice in accordance with § 262.6.

(2) We will notify the State of our decision regarding its corrective compliance plan in accordance with the provisions of § 262.6(g).

(g) We will impose a penalty in accord with the provisions in § 262.1(c) after we make our final decision and the appellate process is completed, if applicable. If there is an appellate decision upholding the penalty, we will take the penalty and charge interest back to the date that we formally notified the Governor of the adverse action pursuant to § 262.7(a)(1).

**§ 262.5 Under what general circumstances will we determine that a State has reasonable cause?**

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its